

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

STATE OF ILLINOIS,)	
ILLINOIS DEPARTMENT OF TRANSPORTATION,)	
Petitioner,)	
)	
v.)	
)	
THE TERMINAL RAILROAD ASSOCIATION OF)	
ST. LOUIS,)	
Respondent.)	
)	
Petition for an Order granting authority to construct)	
two grade separation structures carrying)	
Relocated Interstate Route 70 (FAP Route 998))	
over and across TRRA's mainline through track at)	
Railroad Station 811+81.92, Mile Post 0.78 near the)	
Village of Fairmont City in St. Clair County, Illinois.)	

PETITION FOR APPROVAL OF NEW HIGHWAY GRADE SEPARATION STRUCTURES
(TENG'S CURVED BRIDGE)

The State of Illinois, Illinois Department of Transportation ("Department") by and through its attorney, Lisa M. Madigan, Attorney General of the State of Illinois, by Richard A. Redmond, Special Assistant Attorney General, respectfully petitions the Illinois Commerce Commission ("Commission") for an order authorizing the construction of two grade separation structures carrying the eastbound and westbound traffic lanes, respectively, of relocated Interstate Route 70 (FAP Route 998) over and across mainline through track owned by Terminal Railroad Association of St. Louis ("TRRA") at Railroad Station 811+81.92, Mile Post 0.78, near the Village of Fairmont City in St. Clair County, Illinois. In support of the Petition, the Department states as follows:

1. The Illinois Commerce Commission has jurisdiction over the parties and the subject matter herein pursuant to the Illinois Commercial Transportation Law (625 ILCS 5/18c-7401) and the Illinois Administrative Code (92 Ill. Adm. Code 1500 et seq.)
2. TRRA owns and operates mainline through track at Railroad Station 811+81.92, Mile Post 0.78, near the Village of Fairmont City in St. Clair County, Illinois, which is the subject of this Petition.
3. The Department and the Missouri Highways and Transportation Commission ("MHTC") are engaged in a joint project to construct a new bridge across the Mississippi River between St. Louis and St. Clair County, Illinois. The New Mississippi River Bridge ("NMRB") will accommodate the relocated Interstate Route 70 (FAP Route 998/999) over the river.
4. In the interest of public safety and convenience, the parties have agreed to the proposed construction of the NMRB over and across TRRA's track as delineated in the Grade Separation Construction and Maintenance Agreement (the "Agreement") by and between the Department and TRRA. The Agreement, marked as Exhibit A, is attached hereto and incorporated by reference.

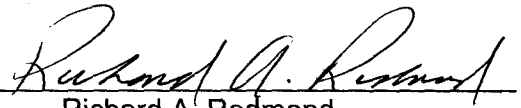
5. TRRA has no objection to the proposed plans as submitted by the Department, as evidenced by TRRA's execution of the Agreement. The Agreement provides for the construction of two grade separation structures carrying the eastbound and westbound traffic lanes (Structure Nos. 082-0318 EB and 082-0319 WB), respectively, of relocated Interstate Route 70 (FAP Route 998) over and across TRRA's mainline through track at Railroad Station 811+81.92, Mile Post 0.78, near the Village of Fairmont City in St. Clair County, Illinois.
6. The parties acknowledge and agree that the Agreement attached as Exhibit A has not been executed by the Department as of the date of filing this Petition. The Department will supplement this Petition with a fully executed copy of the Agreement prior to the Commission's entry of the requested order. TRRA's consent to this Petition is conditioned upon the Commission's receipt of the fully-executed Agreement from the Department and the substitution of the fully-executed Agreement in place of the attached, partially-executed Agreement.

NOW, THEREFORE, PETITIONER, the Department, prays that the Commission enter an order, without hearing, in accordance with its authority, finding:

- A. That the Petition for Approval of New Highway Grade Separation Structures is granted; and
- B. That the Department is authorized to construct two grade separation structures carrying the eastbound and westbound traffic lanes, respectively, of relocated Interstate Route 70 (FAP Route 998) over and across TRRA's mainline through track at Railroad Station 811+81.92, Mile Post 0.78, near the Village of Fairmont City in St. Clair County, Illinois, in accordance with the terms of the Agreement attached hereto and marked as Exhibit A.

Respectfully submitted,
ILLINOIS DEPARTMENT OF TRANSPORTATION

By: Lisa Madigan
Attorney General

By: 
Richard A. Redmond
Special Assistant Attorney General

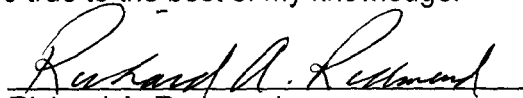
Dated: July 26, 2010

Richard A. Redmond
Special Assistant Attorney General
Holland & Knight LLP
131 S. Dearborn, 30th Floor
Chicago, Illinois 60603
(312) 263-3600
richard.redmond@hklaw.com


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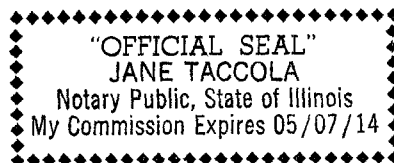
VERIFICATION

I, Richard A. Redmond, first being duly sworn, say that I have read the above petition and know what it says. The contents of the petition are true to the best of my knowledge.


Richard A. Redmond
Special Assistant Attorney General

Subscribed and sworn/affirmed to before me this 26th day of July, 2010.


Notary Public



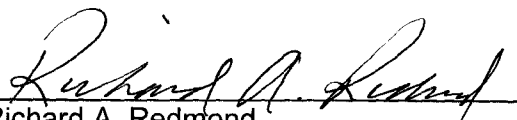
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NOTICE OF FILING

To: David Lazarides
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701

Please take notice that I have this 26th day of July, 2010 filed the attached Petition in the above entitled matter with the Illinois Commerce Commission. A copy of the aforementioned Petition has been sent to all the parties of record via first class mail.


Richard A. Redmond
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Railroad Station 811+81.92, Mile Post 0.78 near the)
Village of Fairmont City in St. Clair County, Illinois.)

CERTIFICATE OF SERVICE

I, Richard A. Redmond, an attorney, certify that I have served a true and correct copy of the foregoing Petition upon the parties to this proceeding on this 26th day of July, 2010 at their respective addresses set forth below:

Mr. Douglas P. Borgmann
Bryan Cave LLP
One Metropolitan Square
211 North Broadway, Suite 3600
St. Louis, MO 63102-25700
doug.borgmann@BryanCave.com

Ms. Gloria Camarena
Assistant Chief Counsel, IDOT
JRTC – Suite 6-600
100 West Randolph
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Gloria.camarena@illinois.gov

Timothy E. Duggan
Attorney at Law
426 South Fifth Street
Springfield, IL 62701
Td_sgdlaw@yahoo.com

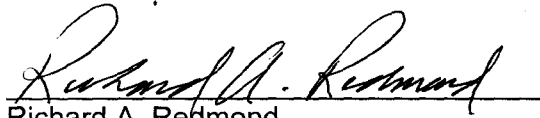
Ms. Christine Reed
Director of Highways, IDOT
ATTN: JEFF HARPING, ROOM 205
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Jeff.harpring@illinois.gov

Ms. Katherine C. Lemley
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Ms. Cindy Bushur-Hallam
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Cindy.bushur-hallam@illinois.gov

Mr. Lance T. Jones
Deputy Chief Counsel, IDOT
2300 South Dirksen Parkway, Room 300
Springfield, IL 62764
Lance.jones@illinois.gov

A handwritten signature in black ink, reading "Richard A. Redmond", written over a horizontal line.

Richard A. Redmond
Special Assistant Attorney General
Holland & Knight LLP
131 S. Dearborn, 30th Floor
Chicago, Illinois 60603
(312) 263-3600
richard.redmond@hklaw.com



Relocated I-70 over NS, TRRA, MCT & Industrial Drive
St. Clair County, IL
IDOT Job No. C-98-023-10
IDOT Bridge No. 082-0318 (EB)
082-0319 (WB)

GRADE SEPARATION CONSTRUCTION AND MAINTENANCE AGREEMENT

THIS AGREEMENT is made and entered into by and between the STATE OF ILLINOIS, acting by and through its Department of Transportation, hereinafter referred to as the "STATE" and the TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS, hereinafter referred to as the "COMPANY". The STATE and the COMPANY are collectively referred to hereinafter as "parties".

WITNESSETH:

THAT, WHEREAS, the STATE proposes to construct FAP 998 (Relocated I-70) which is a relocation of Interstate 70 from I-55/70/64 in East St. Louis, Illinois to I-70 and Cass Avenue in St. Louis, Missouri; and

WHEREAS, as part of this proposed construction, dual grade separation structures will be necessary to carry the eastbound and westbound traffic lanes (Structure No. 082-0318 -- EB; Structure No. 082-0319 -- WB) of Relocated I-70 over and across the COMPANY'S Mainline track at railroad station 811+81.92, Mile Post 0.78; and

WHEREAS, in the interest of public safety and convenience, the STATE hereto proposes to construct said grade separation structures (a five-span continuous curved plate girder bridge on reinforced concrete abutments and piers), substantially as shown on the prints(s) of the general drawing(s) marked **Exhibit 1** (four sheets) (the "Grade Separation Structures"), attached hereto and made a part hereof, together with all related highway facilities are hereinafter referred to as the "Project" and on the COMPANY's right of way (hereinafter referred to as COMPANY's "right of way"); and

WHEREAS, the said Grade Separation Structures and all related highway facilities will be constructed and maintained by the STATE at the STATE'S sole cost and expense; and

WHEREAS, the STATE will petition the Illinois Commerce Commission in accordance with 92 Illinois Administrative Code 1500 to take jurisdiction in this matter and enter such orders as may be necessary.

WHEREAS, the proposed Project requires the services of COMPANY flagger(s); and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

SECTION 1. The "State Required Ethical Standards Governing Contract Procurement" attached hereto as **Exhibit 2**, are hereby made a part of this AGREEMENT.

SECTION 2. The property rights that the STATE will need from the COMPANY for this Project are described in that certain Subordination Agreement dated _____, 2010 between COMPANY and STATE (hereinafter referred to as the "Land Acquisition Document"). The COMPANY will not allow any work by the STATE or any Contractor thereof, over COMPANY'S right of way until the Land Acquisition Document is acquired by the STATE.

SECTION 3. PROJECT PLANS AND SPECIFICATIONS The preliminary and detailed plans, specifications and special provisions for the proposed Grade Separation Structures and related highway facilities shall be prepared by or for the STATE at its sole cost and expense; and all such plans, specifications and special provisions, affecting the interests of the COMPANY, shall be subject to approval by the COMPANY'S authorized representative. The STATE'S Contractor shall not commence any work on the COMPANY'S right-of-way until such approval is obtained in writing from the COMPANY'S representative.

SECTION 4. The COMPANY shall not be construed or deemed to have ratified or adopted the plans or specifications as its own, as a result of any provision of this Agreement. No changes shall be made on any approved plans, specifications or special provisions by either party hereto without the consent in writing of the other party.

SECTION 5. WORK BY THE STATE

(I) The STATE shall furnish or cause to be furnished, at its expense, all the labor, materials and work equipment required to perform and complete the following in substantial accordance with the approved plans, specifications and special provisions:

- (a) The preliminary engineering required for preparation of plans, specifications and special provisions as set forth in Section 3.
- (b) The construction of the Grade Separation Structures and related highway facilities.
- (c) Construction engineering and inspection as set forth in Section 9.
- (d) Incidental work necessary to complete the items hereinabove specified.

(II) The STATE will engage competent and experienced contractors, engineers, design professionals and other consultants, including their subcontractors and employees, which are referred to in this Agreement as "Contractor", with adequate equipment, organization and finances to perform the work required of the STATE by Section 5 of this Agreement. The STATE will notify the COMPANY of the identity of each Contractor performing any work affecting the COMPANY'S interest.

(III) The STATE will require its Contractor(s) to perform his/her (their) work over or upon the COMPANY'S right of way in accordance with the final plans and specifications approved by the COMPANY, the "Standard Specifications for Road and Bridge Construction" adopted January 1, 2007, and the "Supplemental Specifications" in effect on the date of invitation for bids and in accordance with all applicable requirements of the Railroad Job Special Provisions set forth in **Exhibit 3** (the "Railroad Job Special Provisions"), or any later amendment to those Railroad Job Special Provisions that is approved by the STATE and the COMPANY. The STATE will include a copy of said Railroad Job Special Provisions in the STATE'S bid proposal. The STATE shall cause its Contractor at the Contractor's expense to obtain and maintain in force throughout the construction period the insurance specified in the Railroad Job Special Provisions. The STATE shall assign a representative to be present at the job site during construction, to certify the work and to assure that all work and materials meet the requirements set forth in the approved plans and specifications.

(a) The STATE shall cause its Contractor to prosecute and complete its work in a good and workmanlike manner according to the Contractor's own methods, and with and by the Contractor's own means and employees. The STATE shall require its Contractor to use all care and precaution necessary to avoid accident, damage or interference to the COMPANY'S right of way and tracks. The STATE'S Contractor's work shall be free from any supervision, inspection, or control by the COMPANY, except only as may be necessary to enable the COMPANY to determine whether work performed complies with the requirements of this Agreement, including without limitation, conformance to the approved plans and specifications and the Railroad Job Special Provisions. The parties intend that the STATE'S Contractor shall be and remain an independent contractor and that no provision in this Agreement shall be construed as being inconsistent with that status.

(b) Whenever the STATE enters into a contract with a Contractor to perform any work within 4 years after the effective date of this Agreement, as described within Section 5 of this Agreement, upon or over the COMPANY'S right of way as described in the Land Acquisition Document, the STATE shall expressly incorporate into that contract, and shall require the Contractor expressly to incorporate into every subcontract made pursuant to that contract, all of the Railroad Job Special Provisions.

(c) If the STATE'S Contractor performs any work described in Section 5 of this Agreement, upon or over the COMPANY'S right of way as described in the Land Acquisition Document, more than 4 years after the effective date of this Agreement, then the STATE shall require its Contractor to abide by the Railroad Job Special Provisions in force at the time when the Contractor performs that work, as mutually agreed between the COMPANY and the STATE in accordance with the provisions of Section 10 of this Agreement.

SECTION 6. WORK BY THE COMPANY.

(I) The COMPANY shall furnish or cause to be furnished, at the expense of the STATE, and in accordance with the stipulations as contained in the Federal-Aid Policy Guide, Chapter I, Subchapter B, Part 140, Subpart I, (23 CFR 140I) and supplements, all the labor, materials and work equipment required to perform and complete:

- (a) Preliminary and inspection engineering as set forth in Section 9.
- (b) Provide flagging services as set forth in Section 7. (180 estimated days)
- (c) The relocation of the COMPANY's signal/communication wires, if necessary.
- (d) Incidental work necessary to complete the item hereinabove specified.

(II) The estimated cost of COMPANY'S work set forth above is \$320,000.00 as shown and described in the COMPANY'S Material and Force Account Estimate dated July 14, 2010 marked **Exhibit 4**, attached hereto and made a part hereof.

(III) A representative of the STATE shall be present at the job site during construction to certify the work and to assure that all work and materials meet the requirements as set forth in the STATE'S "Standard Specifications for Road and Bridge Construction" and supplements thereto. The COMPANY shall, therefore, give the STATE a 48-hour notice in advance of commencement of the work set forth in this AGREEMENT.

SECTION 7. RAILROAD FLAGGING SERVICES. The STATE'S Contractor shall request, and the COMPANY shall provide, flagging services in accordance with the Railroad Job Special Provisions. The COMPANY shall provide the railroad flagger or alternate means at the STATE'S sole cost and expense. The STATE will reimburse the COMPANY directly for the cost of providing these flagging services in accordance with the Railroad Job Special Provisions.

SECTION 8. SCHEDULING RAILROAD FLAGGING SERVICES. The STATE agrees to invite a representative of the COMPANY to the STATE'S "Pre-construction Conference". At this Conference the STATE'S Contractor shall furnish to the COMPANY the approximate dates flagging services are needed. Subsequent to the conference, the STATE'S Contractor shall request flagging services in the manner described in the Railroad Job Special Provisions.

SECTION 9. ENGINEERING AND INSPECTION OF PROJECT. Each party will provide the necessary preliminary and construction engineering and inspection for carrying out its work as herein set forth, and the costs for such services shall be borne by the STATE. The costs as incurred by the COMPANY for inspecting the work performed by the STATE as may affect its properties and facilities, or the safety and continuity of train operations, shall be borne by the STATE.

SECTION 10. MAINTENANCE OF HIGHWAY FACILITIES. The STATE shall maintain at its expense, or by agreement with others provide for the maintenance of the Grade Separation Structures, and all related highway facilities pursuant to this Agreement.

- (I) The STATE shall have access to the Grade Separation Structures and related highway facilities at all times for the performance of inspections, repair and maintenance, but this Agreement is not intended to alter the property rights or other terms set forth in the Land Acquisition Document.
- (II) The STATE shall notify the COMPANY whenever it will perform maintenance work upon or over the COMPANY'S right of way within 25 feet of the COMPANY'S nearest track or that otherwise affects the COMPANY'S railroad operations within the Project boundaries.
- (III) In accordance with existing maintenance policies, the STATE will not cause snow, ice or other materials to be plowed over the sides of the structures.
- (IV) The STATE will require all Contractors performing maintenance work, when performing work upon or over the COMPANY'S right of way, to abide by all of the Railroad Job Special Provisions agreed upon by the COMPANY and the STATE which are applicable to that work, in accordance with the following subsections:
 - (a) The STATE shall comply with the provisions in this subsection with reference to any contract to perform maintenance work required by this Agreement, which the STATE executes within forty-two (42) months after

the effective date of this Agreement. The STATE shall require all Contractors performing maintenance work to abide by the present version of the Railroad Job Special Provisions for all work to be performed over or upon the COMPANY'S right of way within four (4) years after the effective date of this Agreement. The STATE shall expressly incorporate those Railroad Job Special Provisions into every contract it makes with any Contractor to perform such work, and shall require each Contractor to incorporate those Railroad Job Special Provisions into every subcontract made pursuant to that contract. However, if any Contractor performs any work pursuant to that contract more than four (4) years after the effective date of this Agreement, then notwithstanding any provision in this Agreement to the contrary, the STATE shall require that Contractor to abide by the latest version of the Railroad Job Special Provisions that is approved by the COMPANY and the STATE and in force when the Contractor performs that work upon or over the COMPANY'S right of way.

- (b) Notwithstanding any provision in paragraph (a) within subsection (IV) of this Section 10 to the contrary, the STATE shall comply with the provisions in this subsection with reference to any contract to perform maintenance work required by this Agreement, which the STATE executes more than forty-two (42) months after the effective date of this Agreement. The STATE shall require all Contractors performing maintenance work to abide by the latest amended version of the Railroad Job Special Provisions that is approved by the COMPANY and the STATE and in force on the effective date of that contract, for all work that any Contractor performs over or upon the COMPANY'S right of way within three (3) years after the effective date of that contract. The STATE shall expressly incorporate the same version of the Railroad Job Special Provisions into the contract with any Contractor performing maintenance work, and shall require these Contractors expressly to incorporate the same version of the Railroad Job Special Provisions into every subcontract made pursuant to that contract. However, if any Contractor performs any work pursuant to that contract more than three (3) years after the effective date of that contract, then notwithstanding any provision in this Agreement to the contrary, the STATE shall require the Contractor to abide by the latest version of the Railroad Job Special Provisions that is approved by the COMPANY and the STATE and in force when the Contractor performs that work upon or over the COMPANY'S right of way.
- (c) All Railroad Job Special Provisions approved by the COMPANY and the STATE shall be amended only by written agreement between the COMPANY and the STATE. Not later than forty-two (42) months after the effective date of this Agreement, the COMPANY and the STATE shall reach agreement upon any reasonable amendments to these Railroad Job Special Provisions that will become effective immediately after the expiration of four (4) years after the effective date of this Agreement. From time to time thereafter, the COMPANY and the STATE shall confer with each other and shall reach agreement upon any further amendments to the approved Railroad Job Special Provisions, which shall be reasonable under the conditions then applicable to their respective uses

of the COMPANY'S right of way as authorized by law. Neither the COMPANY nor the STATE shall unreasonably withhold their consent to any amendments proposed in good faith by the other. As soon as practicable after the COMPANY and the STATE reach agreement, in writing, upon any amendment to the Railroad Job Special Provisions, the STATE shall deliver a copy of the amended Railroad Job Special Provisions in writing to its Contractor and shall notify the Contractor of the effective date of that amendment. No amendment to the Railroad Job Special Provisions shall become effective less than sixty (60) days after approval by the COMPANY and the STATE.

- (d) In no event shall the terms of this Section 10 be deemed to affect the terms, conditions and restrictions contained in the Land Acquisition Document, including without limitation terms, conditions and restrictions relating to the STATE'S right to access various portions of the COMPANY'S right of way at ground level.

SECTION 11. MAINTENANCE OF RAILROAD FACILITIES. The COMPANY shall maintain at its expense, its track and all railroad facilities. The COMPANY further agrees to comply with all applicable provisions of federal, state, and local law.

SECTION 12. NOTICE OF ENTRY. The STATE shall require its Contractor(s), before entering upon the COMPANY'S right of way, to notify the authorized representative of the COMPANY as provided in Section 24 herein.

SECTION 13. OPERATIONS NEAR TRACKS. The safety and continuity of operation of the traffic of the COMPANY shall be at all times protected and safeguarded, and the STATE shall require its Contractor(s) to perform the work accordingly. Whenever the work may affect the safety of trains, the method of doing such work shall first be submitted to the COMPANY'S authorized representative for his approval without which it shall not be commenced or prosecuted. The COMPANY'S authorized representative shall not unreasonably withhold such approval. The approval of the COMPANY'S authorized representative shall not be considered as a release from responsibility, or liability for any damage which the COMPANY may suffer, or for which it may be held liable by the acts of the Contractor(s), or those of their subcontractor(s), or their employees.

SECTION 14. TRACK CLEARANCES. The temporary minimum clearances, with reference to the COMPANY'S tracks, of any necessary falsework, bracings, forms or the proposed temporary grade separation structure, as required for the construction of the Grade Separation Structures shall be not less than,

Vertical – Twenty-two feet, zero inches (22' 0")

Lateral – Twelve feet six inches (12' 6") from the centerline of track.

SECTION 15. CLEANUP. The STATE shall require its Contractor(s), upon the completion of the work of such Contractor(s), to remove from within the limits of the COMPANY'S right-of-way all machinery, equipment, surplus materials, falsework, rubbish or temporary buildings of such Contractor(s), and to leave the right-of-way upon which the said Contractor(s) carried on operations in a neat condition, satisfactory to the authorized representative of the COMPANY.

SECTION 16. INSTALLATION OF LIGHTING UPON UNDERSIDE AND FENCING ALONG HIGHWAY DECKS ON GRADE SEPARATION STRUCTURES. At the time this AGREEMENT was executed, both parties agreed that no lighting or fencing shall be provided under or upon the Grade Separation Structures, except in accordance with subsections (a) or (b) of this section. At any time after the completion of the Grade Separation Structures, the COMPANY may apply to the STATE for approval to install lighting within the area of the STATE'S Right of Way through the STATE'S normal permitting process.

The STATE intends to construct 42-inch parapet walls along the edges of the highway decks as shown in the STATE'S approved plans for the construction of the proposed Grade Separation Structures. The COMPANY has requested the installation of protective fencing along the edges of the highway decks, but the Parties disagree as to its necessity. In order to avoid costly litigation and to allow the Project to move forward on schedule at the request of the STATE, and without the COMPANY admitting the merits of any argument or claim raised by the STATE in connection with the COMPANY'S request, the Parties agree that the STATE will not construct or install any fences on or adjacent to the parapet walls along the edges of the highway decks, except in accordance with subsections (a) or (b) of this section.

- (a) If the STATE and COMPANY agree at any time protective fences are necessary along that portion of the bridge that spans the area between a point twenty-five feet (25') west of the centerline of the COMPANY'S existing track and a point twenty-five feet (25') east of the centerline of the COMPANY'S existing track located within the limits of construction as set forth in this AGREEMENT [these exact locations to be further defined by engineering reference points], then the STATE will design, install and maintain appropriate fences along the outside edges of the highway decks, within a reasonable time and at its own expense. If the STATE and COMPANY agree at any time that lighting is necessary over the COMPANY'S Track existing at the time this AGREEMENT was executed, then the STATE will install lighting on the underside of the highway deck according to the plans provided by the COMPANY and approved by the STATE. The COMPANY will be responsible for maintaining all lighting installed on the underside of the deck.
- (b) After the construction of these Grade Separation Structures is completed, if either the STATE or COMPANY believes that the installation of lighting on the underside of the deck or protective fences on or adjacent to the parapet walls along the outside edges of the highway decks that span the COMPANY'S track is necessary, then it shall notify the other Party of that belief in writing, stating the reasons supporting that belief. If any recipient of such notice disagrees with the necessity of such fences, then the recipient of the notice shall provide to the other Party written objections, stating the reasons supporting their belief that such lighting or fences are not necessary, within sixty (60) days after receiving the notice. The Parties shall not object to the installation of the lighting or the protective fences by virtue of the fact that the lighting or protective fences are more difficult to install because the lighting or protective fences were not incorporated into the original plans and specifications for the dual separation structures. If the STATE and COMPANY do not reach AGREEMENT that such lighting or fences are necessary within sixty (60) days after any of them has provided objections in response to the notice as provided in this subsection, then any of them thereafter may apply to the Illinois Commerce Commission (the "ICC") for the issuance of orders related to the installation of such lighting or

fences and the apportionment of the costs of any required installation and maintenance, in the manner otherwise provided by law. The provisions in this section are not intended to prejudice any of the parties with reference to any right of appeal from such ICC orders, or with reference to any future actions relating to any railroad tracks constructed outside the area described in subsection (a) of this section.

SECTION 17. RECORDS. The COMPANY shall keep an accurate and detailed account of the actual cost and expense as incurred by it, or for its account, in the performance of the work it herein agrees to perform.

- (I) The COMPANY, for performance of its work as outlined in Section 6 hereof, may bill the STATE monthly, for the costs and expenses incurred. After the STATE'S representatives have checked the progressive invoices and they have agreed with the COMPANY'S representatives that the costs are reasonable and proper, insofar as they are able to ascertain, the STATE shall promptly reimburse the COMPANY for one hundred (100) percent of the invoices within sixty (60) days. If the COMPANY is not in receipt of payment within sixty (60) days, the applicable portions of 30 ILCS 540 (State Prompt Payment Act) shall be enforced. The progressive invoices may be rendered on the basis of an estimated percentage of the work completed.
- (II) The COMPANY, upon the completion of its work, shall, within one hundred twenty (120) calendar days, render to the STATE a detailed statement of the actual cost and expense as incurred by it or for its account. After the STATE'S representatives have checked the progressive invoices and they have agreed with the COMPANY'S representatives that the costs are reasonable and proper, insofar as they are able to ascertain, the STATE shall promptly reimburse the COMPANY for one hundred (100) percent of the final invoice within sixty (60) days. If the COMPANY is not in receipt of payment within sixty (60) days, the applicable portions of 30 ILCS 540 (State Prompt Payment Act) shall be enforced.
- (III) The COMPANY shall maintain, for a minimum of three (3) years after the completion of the contract, adequate books, records, and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with the contract; the contract and all books, records, and supporting documents related to the contract shall be available for review and audit by the Auditor General and other STATE auditors; and the COMPANY agrees to cooperate fully with any audit conducted by the Auditor General and other STATE auditors and to provide full access to all relevant materials. Failure to maintain the books, records, and supporting documents required by this section shall establish a presumption in favor of the STATE for the recovery of any funds paid by the STATE under the contract for which adequate books, records, and supporting documentation are not available to support their purported disbursement.
- (IV) After the federal or STATE representatives have audited the expenses as incurred by the COMPANY, including such amounts as may have been suspended from any previous payment, the STATE shall promptly reimburse the COMPANY for the suspended amounts, less the deduction of any item(s) of expense as may be found by the federal or STATE representatives as not

being eligible for reimbursement. If the total of the item(s) of expense as may be found by the federal or STATE representatives as not being eligible for reimbursement exceeds the retained percentage plus any amounts which may have been suspended, then the COMPANY shall promptly reimburse the STATE for the overpayment.

SECTION 18. COMPLIANCE WITH FEDERAL REQUIREMENTS. The Project herein contemplated shall be subject to all appropriate federal laws, rules, regulations, orders and approvals pertaining to all agreements, plans, estimates, specifications, award of contract, acceptance of work and procedure in general. The STATE will reimburse the COMPANY as hereinbefore provided, for only such items of work and expense, and in such amounts and forms as are proper and eligible for payment, including all eligible preliminary engineering costs, legal fees and expenses relating to the Project that are properly reimbursable in accordance with 23 CFR Part 646 and subpart I of 23 CFR Part 140.

SECTION 19. NONDISCRIMINATION ASSURANCE. The COMPANY, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this AGREEMENT. The COMPANY shall carry out applicable requirements of 49 CFR part 26 in the award and administration of STATE-assisted contracts. Failure by the COMPANY to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this contract or such other remedy as deemed appropriate.

In the event any work is performed by other than COMPANY forces, the provisions of "an act regulating wages of laborers, mechanics and other workers employed in public works by the State, County, City or any public body or any political subdivision or by anyone under contract for public works" (820 Illinois Compiled Statutes 130/1) shall apply.

SECTION 20. FEDERAL REQUIREMENTS. In compliance with Federal-Aid Policy Guide, Chapter I, Subchapter G, Part 646, Subpart B, (23 CFR 646B) and supplements, which determines (among other things) the railway benefit and liability the construction of the railroad-highway grade separation project as herein proposed meets Classification 2 of Section 646.210(b), a category not considered as a benefit to the COMPANY, and no contribution by the COMPANY is required.

SECTION 21. CANCELLATION. In the event that delays or difficulties arise in securing federal approval, or in acquiring rights of way, or in settling damages or damage claims, or for any other cause which in the opinion of the STATE render it impracticable to proceed with the construction of the project, then at any time before a construction contract is executed or actual construction is started, the STATE may serve formal notice of cancellation upon the COMPANY and this AGREEMENT shall thereupon become null and void. In that event, the STATE shall reimburse the COMPANY for all reasonable costs and expenses incurred by the COMPANY up to and including the date of cancellation, which the COMPANY reasonably incurred in discharging its responsibilities under this Agreement.

SECTION 22. SOVEREIGN APPROPRIATION. At the time this AGREEMENT was executed, there were funds available for the Project; however, obligations assumed by the state under this AGREEMENT shall cease immediately, without penalty or payment, should the Illinois General Assembly or the Federal Highway Administration fail to appropriate or otherwise make available funds for the Project.

SECTION 23. ASSIGNMENT/ SUCCESSORS AND ASSIGNS. Any party may assign any receivables due them under this Agreement. Except for any receivables assigned by a party, these assignments shall not relieve the assignor of any of its rights or obligations under this Agreement. This Agreement shall be binding upon the parties hereto, their successors, assigns, agents, subsidiaries, affiliates, and lessees, including officers, employees, agents, servants, corporations, and any persons acting under, through, or for the parties.

SECTION 24. DESIGNATED REPRESENTATIVES; NOTICES. Each of the parties has designated the person identified in this Section 24 as its representative for purposes of administering the provisions of this Agreement. The current addresses of these designated representatives are set forth in subsections (I) and (II) of this Section 24. Each party to this Agreement shall give any notice or other communication required or permitted by this Agreement, in writing, to the designated representatives of all the other parties, at their respective addresses as provided in this Section 24. The designated representative or other authorized personnel of each party may designate, by written notice to all other parties, the identity of any other persons having the authority to act on behalf of that party in furtherance of the performance of this Agreement, and in like manner may designate any change of address to which the other parties shall thereafter give notice. Notice to another party shall be deemed given three (3) days after mailing by United States mail, with regular mail postage prepaid, addressed to the other party's designated representative as provided in this Section 24, or upon receipt by the other party's designated representative by personal, facsimile or E-mail delivery. To be valid, facsimile delivery to another party shall be followed by delivery of the original document, or a clear and legible copy thereof, to the other party within three (3) business days after the date of the facsimile transmission.

(I) STATE'S Designated Representative:

ATTN: Mary Lamie, P.E.
Regional Engineer
Illinois Department of Transportation
Street Address: 1102 Eastport Plaza Drive, Collinsville, IL 62234
Facsimile No: (618) 346-3119
Telephone No: (618) 346-3110
E-mail: Mary.Lamie@illinois.gov

(II) Terminal Railroad's Designated Representative:

ATTN: Mr. C. R. McQueen, Jr.
Title or Position: Director Engineering Services & Administration
Terminal Railroad Association of St. Louis
Street Address: 1000 St. Louis Union Station, Suite 200.
St. Louis, MO 63103
Facsimile No: (314) 621-3673
Telephone No: (314) 539-4724
E-mail: rmcqueen@terminalrailroad.com.

SECTION 25. SECTION HEADINGS. All section headings contained in this Agreement are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

SECTION 26. AMENDMENTS. The duly authorized representatives of the parties must approve any change in this Agreement, whether by modification or supplementation, by means of a formal contract amendment.

SECTION 27. ENTIRE AGREEMENT. This Agreement represents the entire understanding between the parties regarding the Project and supersedes all prior written or oral communications between the parties regarding the Project.

SECTION 28. EXECUTION IN COUNTERPARTS. This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same agreement.

SECTION 29. EFFECTIVE DATE. This Agreement shall become effective when it is approved and signed by all parties.

SECTION 30. SOVEREIGNTY. The State of Illinois enters into this Agreement as a sovereign State and not as principal and agent or as a joint venture.

SECTION 31. GOVERNING LAW. All contracts and subcontracts that IDOT makes with any person to carry out IDOT's obligations under this Agreement shall be construed according to the laws of the State of Illinois.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed in duplicate counterparts, each of which shall be considered as an original, by their duly authorized officials as of the dates below indicated.

Executed by the COMPANY, this 20th
day of July, 2010.

**TERMINAL RAILROAD ASSOCIATION
OF ST. LOUIS**

By: K.T. Paubel
(Print Name) K.T. Paubel
(Print Title) CFO

Executed by IDOT this _____ day
of _____, 20__

**STATE OF ILLINOIS,
DEPARTMENT OF TRANSPORTATION**

By: _____
Gary Hannig
Secretary

By: _____
Christine M. Reed, P.E.
Director of Highways
Chief Engineer

Date: _____

Date: _____

The COMPANY certifies that:

1. The number shown on this form is the COMPANY's correct taxpayer identification number (or the COMPANY) is waiting for a number to be issued to them), and
2. The COMPANY is not subject to backup withholding because: (a) the COMPANY is exempt from backup withholding, or (b) the COMPANY has not been notified by the Internal Revenue Service (IRS) that the COMPANY is subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified IDOT that the COMPANY is no longer subject to back-up withholding, and
3. The COMPANY's person with signatory authority for this AGREEMENT is a U. S. person (including a U.S. resident alien)

Taxpayer Identification Number:

Social Security Number _____

Or

Employer Identification Number

Terminal Railroad
Association of St. Louis
43-6003713

(If you are an individual, enter your name and SSN as it appears on your Social Security Card. If completing this certification for a sole proprietorship, enter the owner's name followed by the name the name of the business and the owners SSN or EIN. For all other entities enter the name of the entity as used to apply for the entity EIN and the EIN.)

Legal Status

- | | |
|--|--|
| <input type="checkbox"/> Individual | <input type="checkbox"/> Government |
| <input type="checkbox"/> Sole Proprietor | <input type="checkbox"/> Nonresident Alien |
| <input type="checkbox"/> Partnership/Legal Corporation | <input type="checkbox"/> Estate or Trust |
| <input type="checkbox"/> Tax-exempt | <input type="checkbox"/> Pharmacy (Non Corp.) |
| <input type="checkbox"/> Corporation providing or billing medical and/or health care services | <input type="checkbox"/> Pharmacy/Funeral home /Cemetery |
| <input checked="" type="checkbox"/> Corporation NOT providing or billing medical and/or health care services | <input type="checkbox"/> Limited Liability Company (select applicable tax classification) |
| <input type="checkbox"/> Other _____ | <input type="checkbox"/> D= Disregarded entity |
| | <input type="checkbox"/> C= Corporation |
| | <input type="checkbox"/> P= Partnership |